

MEMORANDUM

SUPREME COURT - KINGS COUNTY - CRIMINAL TERM - PART 7

THE PEOPLE OF THE STATE OF
NEW YORK,
-vs-

K [REDACTED] J [REDACTED],

Defendant.

: By: NEIL JON FIRETOG, J.S.C.

: Dated: May 12, 2016

: Indictment #9390/15

:

Appearances:

District Attorney's Office
By: Catherine Fernandez, Esq.

Legal Aid Society
By: Martha Saunders, Esq.
Attorney for Defendant

The following constitutes the decision and order after the combined *Dunaway-Mapp Huntley, Ingle* hearing. For the reasons stated in the court's oral ruling and the reasons stated below, the motions to suppress the gun recovered from the vehicle and defendant's statements to the police are granted.

The People's first witness was Det. Rashon Lacoste, of the Brooklyn North Gang unit, who testified that on November 17, 2015 at about 8pm, he was on the corner of Vermont Street and Riverdale Avenue in Kings County. He was in a minivan, but was working with two other gang unit detectives, who were outside on the street nearby. Det. Lacoste testified that he saw a purple Lexus traveling on Vermont Street and through the car's open windows observed that neither the driver nor the front seat passenger were wearing seatbelts. Det. Lacoste advised Det. Echevarria by radio that he wanted to stop the car, which he did and Det. Echevarria and Det. Tricoche approached the location. Det. Lacoste stated that he approached the car on the driver's side, while Det. Echevarria approached by the passenger side. All the car windows were down. The driver of the vehicle was described as wearing a grey sweatshirt and a dark brown jacket and was identified in court as the defendant.

Det. Lacoste testified that when he asked the driver for his license and the car registration, the defendant indicated he was on the job and that he worked for the NYPD. He presented an auxiliary NYPD shield and ID as well as a driver's license in the name of N [REDACTED] R [REDACTED]. Defendant was unable to produce the car registration and when the front passenger opened the glove compartment, the defendant immediately reached over and slammed it shut. At that point, Det. Echevarria told Det. Lacoste to remove everyone from the car, but did not indicate why. Subsequently, when all the

occupants were outside the car, Det. Echevarria went back to the glove compartment, then returned to where Det. Lacoste was standing and showed him a weapon he described as a long 22. Det. Lacoste testified that the officers called for backup and that the occupants of the car were all transported to the police precinct.

The People's other witness was Det. Gabriel Echevarria, also from the Brooklyn North Gang unit. He testified that at about 8pm on November 17, 2015 he was in the vicinity of Vermont Street and Riverdale Avenue, while his partners Dets. Lacoste and Tricoche were in a vehicle nearby. On cross-examination he stated that Det. Tricoche was outside the van with him observing what appeared to be a drug transaction on the street. When Det. Lacoste stopped a purple Lexus and approached the driver's side, Det. Echevarria approached the passenger side and observed Det. Lacoste in conversation with the driver, identified in court as the defendant. The car windows were closed and Det. Echevarria asked the occupants to open all the windows, which they did at his request. Through the open passenger side window, he saw the passenger open the glove compartment and the defendant slammed it shut immediately. He testified that, in the short time that the glove compartment was open, he was able to observe the handle of a gun wrapped in a shirt in the glove compartment. Det. Echevarria directed Det. Lacoste to remove everyone from the car and he then recovered a loaded .22 caliber handgun from the glove compartment. Det. Echevarria testified that they did not call for backup.

The occupants were taken to the 81st Precinct, where defendant was read his *Miranda* rights and made oral and written statements at about 10pm. The sum and substance of his statement was that he found the gun and that his brother N [REDACTED] R [REDACTED] said he would turn the gun in when he went to the police station. The defendant also stated that the other occupants of the car did not know that gun was in the glove compartment.

Based on all the testimony and the inconsistencies in the testimony of the two detectives, the court finds that the stop of the vehicle defendant was driving was unlawful. The scenario presented by Det. Lacoste regarding his observations of defendant is highly unlikely. Det. Lacoste's testimony that, from his minivan, he observed a vehicle going by him with its passenger window open at 8pm in mid-November, with a temperature in the 40's and that through the passenger window he was able to observe that the defendant, who was wearing a grey sweatshirt and dark brown jacket, was not wearing a seatbelt. Det. Echevarria's testimony that the vehicle's windows were all closed at the time he approached and that he had to tell the occupants to open the windows is more credible, making Det. Lacoste's version of the incident far less likely.

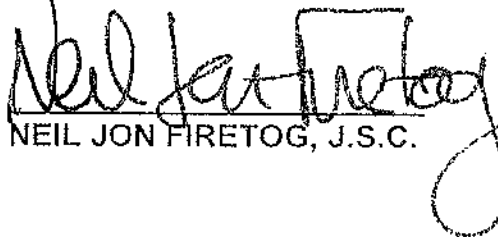
Even if the court were to find the stop of the vehicle to be lawful, which it does not, the testimony regarding the discovery of the gun in the glove compartment is also suspect. Both detectives testified that when the passenger opened the glove

compartment the defendant immediately slammed it shut. In that split second that the glove compartment was ajar, the detective's testimony that he observed the handle of a gun wrapped in a shirt does not seem reasonable.

The People have failed to show that the officers reasonably suspected a violation of the Vehicle and Traffic Law. *People v. Ingle*, 36 N.Y.2d 413. They have not met their burden of going forward with sufficient evidence to show the legality of the police conduct. *People v. Berrios*, 28 N.Y.2d 361.

The stop of the car and the discovery of the weapon being unlawful taints the statement made by defendant and as such, the motion to suppress is granted in all respects.

ENTER:


NEIL JON FIRETOG, J.S.C.